

P20904.A08

C2 70. Knee prosthesis according to Claim 58, wherein the metal base has a curved anterior portion and a straight posterior portion and wherein said arc-shaped guide mechanism has a center axis which is arranged on a plane extending from the curved anterior portion to the straight posterior portion, the plane passing through a tibia bone axis.--

REMARKS

Upon entry of the present amendment and election, Applicant will have elected with traverse the invention defined as Species I directed to Figures 1-3. Claims 29, 44, 45, 48, 53, 54, 56 and 57-70 are readable on the elected embodiment.

In the election of species requirement, the Examiner set forth a requirement to restrict the claimed invention to one of twelve (12) species under the provisions of 35 USC 121 because they are patentably distinct. The species delineated by the Examiner are as follows:

Species 1 - Figure 1;

Species 2 - Figure 4;

Species 3 - Figure 6;

Species 4 - Figure 9;

Species 5 - Figure 12;

Species 6 - Figure 15;

Species 7 - Figure 18;

Species 8 - Figure 19;

P20904.A08

Species 9 - Figure 22;

Species 10 - Figure 25;

Species 11 - Figure 28; and

Species 12 - Figure 30.

The Examiner has set forth no basis indicating why the inventions are distinct species. Moreover, the Examiner also indicated that no claims are generic. Applicant respectfully traverses the election of species requirement.

Applicant submits that the Examiner's basis for the election of species is improper for the following reasons: first of all, the Examiner has failed to set forth why the species are distinct. For this reason alone, it is submitted that restriction is inappropriate and that all the claims in the present application should be examined together.

Furthermore, it is believed that the features described in each of Species 1-12 are not materially different, so as to constitute distinct inventions, for examination purposes. As the Examiner will probably acknowledge, they all relate to a knee prosthesis having a metal base and tibia plate. Therefore, the searches must be overlapping for the species. Thus, no undue burden is placed on the Examiner when examining all of the claims together. Consequently, it is believed that all the claims, i.e., claims 29-70 relate to a single inventive concept.

Finally, the restriction requirement set forth by the Examiner omits one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. As set forth in M.P.E.P. § 803 "an appropriate explanation" must

P20904.A08

be set forth by the Examiner as to the existence of a "serious burden" if the restriction were not required. By virtue of the Examiner's requirement and because the claims of the various species are so closely related, it is submitted that there is no serious burden on the Examiner in examining all of the claims together. Furthermore, as noted above, the search for all of the claims includes a significant amount of overlap. Thus, no serious burden would come to bear on the Examiner.

For all these reasons, and consistent with the office policy as set forth in M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider the position taken in the above-mentioned Official Action and withdraw the election of species requirement. Accordingly, the Examiner's election of species requirement is believed to be improper and has been traversed for the reasons set forth above.

Nevertheless, in order to be fully responsive, Applicant has elected with traverse the invention defined by the Examiner as Species 1, i.e., Figures 1-3 and claims 29, 44, 45, 48, 53, 54, 56 and 57-70, in the event that the Examiner chooses not to reconsider and withdraw the restriction requirement.

Should the Examiner have any questions or comments regarding the present response or this application, the Examiner is respectfully invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge any additional fee necessary to have

P20904.A08

this paper entered to Deposit Account No. 19-0089.

Should there be any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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July 17, 2002
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Enclosures: Appendix

APPENDIX

Changes to claim 29 as follows:

29. (Amended) Knee prosthesis comprising:

a metal base secured to an anchoring rod for fixing it into a tibia of a patient;

a plastic tibia plate freely slidable over said base;

the metal base and the tibia plate having a guide mechanism defining a center of rotation [offset from that of a tibia bone axis, so as to allow], the guide mechanism allowing the plate to slide in rotation over said base;

said guide mechanism being positioned a given distance from the center of rotation.